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The land of four quaters

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PART V

THE FUTURE OF EUROPEAN SOCIAL SECURITY LAW

22. The land of four quarters: The future of European social security law

*Gijsbert Vonk**

I. INTRODUCTION

The final chapter of this book deals with the future of European social security law. I shall discuss this subject neither as a seer nor as a fortune teller. Instead I am going to present four possible scenarios for the future of the EU governance model of social security (see Figure 22.1). These four scenarios are placed on a simple raster matrix, both axes represent uncertain future developments. The horizontal axis depicts the intensity of the process of European integration. The process may deepen and accelerate (EU united) or it may grind to a halt or even reverse (EU disintegration). The vertical axis depicts the possible evolution of social security between the two extremes of ‘consolidation’ and ‘fragmentation’. The future scenarios must then be seen as the results (governance models) ensuing from the four possible combinations which exist in the matrix raster.

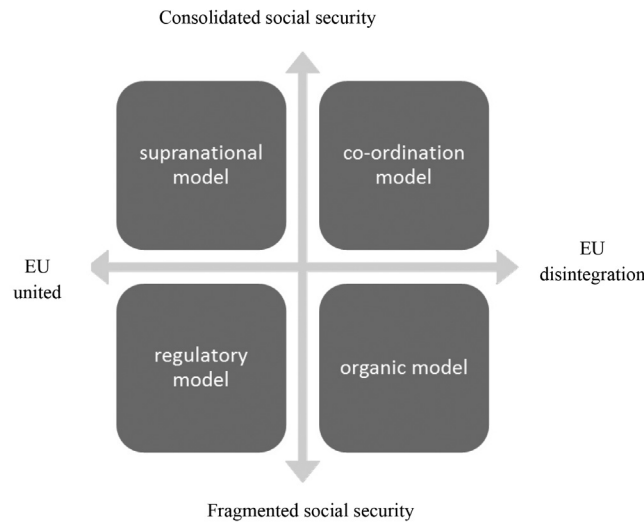


Figure 22.1 Scenarios for future social security

* I want to thank Barbara Brink for the intellectual support she gave when I was writing this chapter and for lending me her handbooks on political science and public administration.

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First of all, in Section II I will give some guidance as to the meaning and interpretation of the two axes. While the horizontal axis of EU united versus EU disintegration might be clear from the outset, the vertical axis of consolidation versus fragmentation definitely requires more explanation. What do these concepts mean and why not choose more obvious policy extremes, such as public versus private or central versus local? In Sections III to VI I will present the four EU governance models of social security. They come under the banners of: the supranational model, the co-ordination model, the regulatory model and the organic model. Section VII is reserved for some concluding observations: how do the visions of the authors contributing to this research handbook fit in the governance models?

For the purposes of this chapter the term ‘governance model’ refers to a typology of instruments that are used to realise EU social security objectives. For the sake of clarity, I refer to the *social security objectives* as the official mission mentioned in the EU 2020 strategy, which refers to inclusive growth by realising higher employment rates and reduced poverty levels. Concrete targets have been developed by the European Commission for these objectives.¹ Also it is possible to fall back on Article 151 TFEU with its roots in the original EEC treaty of 1957:

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

EU instruments available to realise these goals can be very different. Binding EU law is one of them. In order to be able to facilitate an external view of the future of European social security law, I will employ the wider term of ‘governance’. Binding law is one of the instruments of governance operating alongside soft law and non-legal instruments.

It is tempting to develop a preference for one of the four governance models. If one considers contemporary literature in the area of political science and public administration, with its emphasis on the diminishing role of the national state and its rejection of EU hard law centralism, the regulatory model might emerge as the favourite for many commentators, at least this is my impression. Conversely, those with political interests vested in the member states are perhaps more likely to argue in favour of the co-ordination model, while European federalists may dream of a supranational EU social security system, etc. But in this chapter I will try to refrain from developing a preference for any of these governance models. The governance models presented must be seen as outcomes of possible future developments that we cannot really predict, each of them having its own merits and shortcomings. Here the reader must be warned that I defend each model with equal vigour and enthusiasm, although, admittedly, some models made this easier than others. But on the whole, I was surprised to learn how European social security law is potentially capable of adapting itself to an unsure future, as a consequence of intense interaction with the outside world.

¹ See Chapter 9 of this volume.

Li EU United versus EU Disintegration

Before I present the models it is helpful to elaborate upon the meaning of the opposing trends projected in the raster matrix. Let us start with the horizontal axis dealing with European integration. Defining European integration touches upon a very lively debate and an astounding richness of literature produced by political scientists. A useful definition of integration I came across is one given by Ernst Haas in 1958, when he refers to it as a process ‘whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new centre, whose institutions process or demand jurisdictions over pre-existing national states’.² However broad, this definition suits my purposes as it defines integration as a process which involves a shift of power away from the nation state to a new, in our case a European, centre. In political science, integration theories are classified into federalist, neo-functionalist and liberal inter-governmentalist theories (and some others I hasten to add). Each of these theories provides a framework of understanding as to how and why powers slip away from individual member states to institutions to an external centre. The inescapable outcome of this process is a power shift to European institutions which impact more heavily upon national policy domains and domestic government activity, including the area of social policy and social security. This is what is meant by an ‘ever closer Union’.³

Curiously enough, textbooks on European integration do not contain any theories about the opposite trend of disintegration, at least none that I am aware of. While European integration may be described as a ‘process of dialectic incompleteness, unevenness, and partial frustration’,⁴ or as an Echternach procession,⁵ it nonetheless moves forward. Apparently, a collapse or implosion of the European project is not regarded as feasible, at least by mainstream academics; there are, of course, individual commentators who theorise and speculate about a process of disintegration.⁶ There are also authors who combine these two visions of Europe, such as Jan Zielonka in his essay entitled *Is the EU Doomed?*⁷ According to the author it might well be doomed, but this is not something to be frightened of as Europe as an integrated entity may well continue to grow stronger.

² Quoted by Antje Wiener and Thomas Diez (eds), *European Integration Theory* (Oxford University Press 2004) 2 with reference to EB Haas, *The Uniting of Europe: Political, Social, and Economic Forces 1950–1957* (Stanford University Press 1958) 16.

³ Article TFEU: ‘This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.’

⁴ Philippe C Schmitter ‘Neo-functionalism’, in Antje Wiener and Thomas Diez (eds), *European Integration Theory* (Oxford University Press 2004) 45–75, 70.

⁵ Elspeth Guild and Florian Geyer, *Getting Local: Schengen, Prüm and the Dancing Procession of Echternach; Three Paces Forward and Two Back for EU Police and Judicial Cooperation* (CEPS Commentaries 2006).

⁶ See Ivan Krastev, ‘European Disintegration? A Fraying Union’ (2012) 23(4) *Journal of Democracy*.

⁷ Jan Zielonka, *Is the EU Doomed?* (Wiley 2014).

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For the purposes of this model, disintegration is considered to be a possibility. I reserve the term for a process of integration that is becoming bogged down or even reversing. Allowing for such a scenario is not just a way of pleasing the growing number of Euro-sceptics even among the closest of my friends. Neither is it done to play tribute to British Prime Minister Cameron who wants to have the reference of the 'ever closer Union' scrapped from the EU treaty. It is just a matter of showing some humility in the face of the course of history, which nobody can predict.

I.ii Consolidated versus Fragmented Social Security

The description of social security evolution in terms of consolidation and fragmentation needs a little more explanation. I first used the term social security fragmentation in a presentation in 2006 to describe the structural developments in Dutch social security in terms of an 'expulsion from paradise'. It was for a round table for civil servants organised by the Ministry of social affairs. This was more or less my argument:

While once in the 70s of the previous century social security constituted a comprehensive system of social insurance and social assistance under the one roof of the Ministry of social affairs, it has now spread in all directions. There are new methods of income protection: fiscal measures, life cycle savings schemes, statutory labour law protection, local welfare initiatives, etc. These new forms of social security come under various names and banners and give rise to various new agencies which are engaged in the administration and supervision, some public, some private, some hybrid. There is no longer a unique policy focus to hold social security together. Instead the whole project is hijacked by a pragmatic political agenda which includes exogenous policy goals. Fiscal austerity, immigration control, the wish to restore citizens' values and the desire to control individual behaviour are engines for change as well as income protection and activation. Together the constant stream of interventions leads to more conditionality, which in its turn complicates the legal position of beneficiaries. The result is that beneficiaries rely heavily on the judiciary to clarify or strengthen their individual legal position. This complicates matters even further, particularly taking into account that this case law seems to be increasingly overshadowed by the European courts in Luxemburg and Strasbourg. The fragmented social security landscape is held together by a network philosophy and the increased dominance of ICT in gathering information and delivering benefits. But the citizen does no longer understand the logic of the system and has estranged himself from the essential message, that the state represents the community characterized by solidarity. The Dutch experience is not a unique one. The neighbours on the other side of the channel are messing up the system even more than us. But on the eastern borders, the system has at least maintained some characteristics of the old monolithic system, because there social security is at least held together by the one and only Sozialgesetzbuch with its inner order and logical structure administered by a stable bureaucracy. The German welfare state is a consolidated welfare state.

This is what I told my audience. Looking back at the lecture I must admit that my portrait of Germany and the UK were stereotypes and that my analysis was perhaps carried too much by a feeling of nostalgia for the golden age of social security and resentment about the deconstruction that followed. But there is more to it than that. As it turns out, this notion of fragmentation is not at all unique to social security. It lies at the core of the analysis of a modern and complex society as a whole, with tentacles reaching out to globalisation, individualisation, the decline of social capital, the

‘network society’ (Castells⁸) and the ‘risk society’ (Beck).⁹ Fragmentation is a generally recognised characteristic of contemporary society.¹⁰

Fragmentation goes hand in hand with shifts of government away from classical central state institutions. Power shifts away vertically to European and international institutions and in the other direction: to regional and local government. It shifts away horizontally to the judiciary, to private co-operations, to functional public authorities and to civil society organisation. It even – paradoxically – shifts to the individual citizen who is increasingly called upon to act as a co-producer of public policy and individual decisions. It is with these power shifts that we identify the term fragmentation.

If fragmentation is such a widespread structural phenomenon for society as a whole, why choose it as an uncertain trend for the purposes of our matrix? First of all, it is possible to see fragmentation as a governance continuum, whereby in the one extreme central state institutions maintain a full grip on the formation and administration of social security (consolidation) and in the other extreme all power is fully relinquished to other actors (fragmentation). This is an important notion, for in between these two extremes there are many points which by now we have learned to appreciate as contemporary modes of governance. For example, the contemporary public/private divide is not an absolute one. Discussions on privatisation invariably end up in deliberations on the ‘regulatory welfare state’: how does the state exercise control over private institutions in order to make sure values of social security in terms of protection, universality, equality of treatment, etc. are not undermined?¹¹ Does it matter in this respect whether control is exercised by the state or rather by social partners who run schemes collectively? Similar questions of governance arise in relation to the decentralisation discussion.¹² Is it possible to localise the welfare state, without letting go of the final responsibility of the state for the welfare of its citizens? What instruments can be used by central government to realise this responsibility: regulation, supervision, financial incentives, etc.? Secondly, it remains at least a theoretical possibility that social security will evolve towards a consolidation, or that such consolidation will come about in reaction to some crisis or major event. Calls for a universal credit,¹³ a Europe-wide social security scheme¹⁴ or even a basic income for all¹⁵ are never fully silenced.

⁸ M Castells, *The Rise of the Network Society* (Blackwell 1996).

⁹ U Beck, *World Risk Society* (Polity Press 1999).

¹⁰ Cf. Victor Bekkers, *Beleid in beweging. Achtergronden, benaderingen, fasen en aspecten van beleid in de publieke sector* (Lemma 2012) 28–34 (versplinterde samenleving).

¹¹ See GJ Vonk and A Tollenaar (eds), *Social Security as a Public Interest. A Multi-disciplinary Inquiry into the Foundations of the Regulatory Welfare State* (Intersentia 2010).

¹² See GJ Vonk and A Tollenaar (eds), *Lokale verzorgingsstaat. Nieuwe uitdagingen voor de sociale rechtsstaat* (Vakgroep bestuursrecht en bestuurskunde 2012).

¹³ A UK government attempt to harmonise the multitude of means-tested non-contributory benefits in one scheme, which ran into organisational trouble and has so far not been realised.

¹⁴ For example, the thirteenth state proposal for migrant workers by Danny Pieters and Stefan Vansteenkiste, *The Thirteenth State* (Acco 1993).

¹⁵ See Phillipe van Parijs, ‘A Basic Minimum Income. A Simple and Powerful Idea for the 21st Century’ (2014) 42(1) *Politics and Society*.

II. THE CO-ORDINATION MODEL

Let us start with the north-eastern quarter of the matrix, the co-ordination model. This resembles the existing governance model for European social security law the most. Articles 117 and 118 of the old EEC Treaty did not grant any clear powers in the field of social security to the community institutions, apart from promoting the co-operation and the exchange of information between the member states. Binding measures were only to be expected from the co-ordination of social security, presented as a by-product of the freedom of movement of workers in then Article 51 EEC. It is in view of this situation that social security has been referred to as the last bastion of autonomy of the member states. Apart from some partial exceptions in the area of the equality of treatment between men and women and employee protection in the case of transfer of undertakings and insolvency of the employer, no harmonisation has ever come into being. While it is true that the member states have had to endure frequent and sometimes highly resented interference from the Court of Justice in the field of the co-ordination and the freedom of movement of persons, in the end the court has always drawn a clear line between harmonisation and co-ordination. Co-ordination is supposed to leave the member states free to decide upon the architecture, structure and entitlement conditions of their own social security systems.¹⁶

The original division of competences is still visible in the present state of European social security law, although the social security powers of the EU institutions under Article 153 TFEU have now widened. But the open method of co-ordination is still favoured over binding measures. This approach fits in with the relative autonomy the member states still want to maintain. For this reason I refer to the present governance model as a 'co-ordination model'. It refers to the two types of co-ordination (OMC and the co-ordination system of protection of social security rights of mobile persons through Regulation 883/2004).

With the governance model arising out of the Euro crisis, things start to differ. Through the backdoor of economic governance and the European Semester, EU guidelines are now encroaching closer and closer upon the field of employment law, wages and social security.¹⁷ In reality this cannot be denied, but it is not envisaged in the present model, which is not based on an Ever Closer Union but on disintegration.

Is this co-ordination model bad for realising social security objectives? Not necessarily. Remember, in this model national governments are the masters of their own social security systems. Democracy is guaranteed through the national parliaments, some of which are very old. Perhaps, in such a situation, the analysis of the 1956 Ohlin report underlying the article 117 EEC compromise continues to hold true. Each country has the social security system that it deserves economically. In the meantime, an upward harmonisation of the social security standards is expected to occur through the invisible hand of competition between the member states and the market mechanism. Or as Article 151 TFEU still puts it: 'such a development will ensue ... from the

¹⁶ Expressed by the Court of Justice of the EU for first time in Case C-1/78 *Kenny* [1978] ECR 01489, which is consistent case law. See also Pennings in Chapter 13 of this volume.

¹⁷ S Bekker, *The EU's Stricter Economic Governance: A Step Towards More Binding Coordination of Social Policies?* WZB discussion paper SP IV (WZB 2013) 501.

functioning of the common market, which will favour the harmonisation of social systems’.

It can be argued that with the waiver of national monetary powers following on from the introduction of the Euro, the analysis contained in the old Ohlin report is no longer valid, as member states can no longer de- or re-value their currencies. In other words, it is no longer possible for a member state to sustain a high level of social expenditure without incurring negative effects for the competitive position, simply by devaluing the currency. Indeed, this is true, but there are others who claim that with improvements in the OMC method, non-binding co-ordination remains a possible policy alternative for integration in non-federal Europe.¹⁸ In any case, it cannot be said that the 60 years of experience with the existing mode of governance has worked out badly for the development of social security in Europe, despite fears of social dumping and the effects of negative integration. The welfare states in Europe have proven to be resilient.¹⁹ It can even be submitted that a relaxation of the strict co-ordination rules for mobile persons would not be a drama for the EU mobile citizens. At least there is evidence that a system of co-ordination can also function without the context of supranational watchdogs such as the Commission and the Court of Justice: bilateral and multilateral co-ordination treaties are also a possibility.²⁰ One has to argue his case in these social conservative, Euro-sceptical terms in order to defend the virtues of the co-ordination model.

III. THE ORGANIC MODEL

We are now moving on to the south-eastern quarter, where there are still no European powers in the field of social security, but where the governments no longer exercise full control over their social security systems either. If we close our eyes and imagine what the world looks like, a thriving but chaotic landscape emerges of mechanisms, programmes, arrangements, funds and schemes to provide income security. The scale of the schemes varies from very small local care initiatives to huge pan-European private pension funds. One person is probably affiliated to a multitude of such institutions. For example, while my minimum pension is still guaranteed by the Dutch old-age pension scheme, I am now also a member of a life-cycle savings account set up for personnel of universities belonging to the Hanseatic League (a co-operation between Northern European cities). Also I participate in a community support centre in the area where I live (which occasionally requires me to look after my senile neighbour) and free basic health care is provided by a separate scheme set up by the province of Groningen, which has decided to come up with a scheme for its own residents after central

¹⁸ However reluctant such claims might be. See, for example, the interesting paper by Renaud Thillaye, *Co-ordination in Place of Integration? Economic Governance in a Non-federal EU*, Working Paper No 32, www.foreurope.eu.

¹⁹ See Paul Pierson, ‘The Welfare State over the Very Long Run’ (Zes-Arbeitspapier 2011).

²⁰ For an overview of global co-ordination efforts, see Roger Blanpain et al (eds), *Social Security for Migrant Workers, Selected Studies of Cross-border Social Security Mechanisms* (Kluwer Law International 2014) 84.

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government decided to go further along the path to private health care. Central government is trying to co-ordinate the variety of schemes that have come into being, but with limited effects. New developments and approaches move in like waves. The operation of the schemes is highly ICT driven. Like social media contacts, social security liaisons are volatile and seem to generate themselves. European institutions do not have much grip on this process either. There are plenty of European initiatives in the form of resolutions from the European Parliament and communications by the Commission, calling for vigorous action and flagship initiatives for this or for that. But the documents are toothless. In this model, society is in charge of social security, not the state.

Having some inclination towards the anarchistic, this imaginary social security world appeals to me. It is fast, adaptable, non-repressive and based on true solidarity ties and personal responsibility. It grows organically and develops by learning. But behind its romantic appeal there are dark clouds on the horizon. Will such a system be capable of protecting the weak and the vulnerable? Will it lift 20 million people out of poverty before 2020? What will be the position of those who somehow missed the bus of life and cannot organise social security for themselves? This is indeed a serious concern for the project of social security which did not develop into national schemes in which each worker's or citizen's participation is rendered obligatory without good reason. If it is to succeed it would invariably infer that there is a residual social assistance programme for vulnerable citizens. In this model, such a programme would be a shared responsibility for all layers of government and for civil society. If there is a system failure, all the actors must take collective steps to seek a solution.

The organic model of governance probably goes hand in hand with a lively human rights discourse. The fewer guarantees the system gives to each person's full protection, the more human rights will be called upon to address the problem. This is why certain groups of persons who are presently excluded from the scope of the social security system, such as asylum seekers and other immigrants with weak status, rely so heavily on the court mechanism where they invoke human rights in order to claim support. This leads to frequent interventions by the Court of Justice, the European Court of Human Rights and the European Committee of Social Rights. Were we to move in the direction of the organic model, it is judicial institutions such as these that will play an increasingly important role as watchdogs of the social security project. Of course, countervailing power from the judiciary can only be successful when the rule of law is maintained and an accessible and effective legal mechanism exists to invoke protection of the human right to social security.

IV. THE REGULATORY MODEL

In the regulatory model the social security mechanism is highly fragmented but now under strict control of the European institutions which have unlimited powers in the social field. This does not mean to say that the European institutions are the owners and administrators of social security. This is a model based on the philosophy of 'steering but not rowing', a paradise for regulatory governance and a most serious contestant to

receive the Giandomenico Majone prize.²¹ All possible instruments to reach overarching objectives are used: setting minimum norms, formulating common policy standards and binding targets, introducing positive and negative financial incentives, concluding performance contracts with the member states, regional government and private social security institutions, etc. The whole system requires a huge exchange of data from the local level to the central European level. Also, in order to monitor whether European objectives are met, a multi-layered system of supervision and inspection has come into being giving rise to a complex functional bureaucracy. This is the open method of co-ordination, but now with serious ties attached and now blown up to huge proportions. Democratic control over this system is primarily exercised by the European Parliament. National and regional governments are co-administrators of centrally established rules and policies.

Obviously, this model is attractive in terms of realising the social policy objectives and it combines this advantage with a high degree of subsidiarity and freedom at the domestic level. What is special about the model is that the overarching targets and objectives can be imposed on domestic schemes which are designed for different purposes. For example, suppose the domestic social security systems only serve partial interests for smaller groups of persons through a diversity of categorical special non-contributory benefits, and Europe is interested in realising reduced levels of poverty, a stronger income position for those who are engaged in atypical labour relations and better protection for young parents with care responsibilities for children. The only thing that the European bureaucrats have to do is turn some knobs on the huge control panels of their regulatory system and the local social security systems will start to react to help these goals to become reality. At least in theory. This is not an organic learning system, but one which is based on the notion of rational government.

Another possibility in this model is to realise a higher degree of solidarity between the countries and regions of the European Union. This can be done using the structural funds to directly fund national, regional and local social security initiatives. The income of The EU's own resources chiefly comprises agricultural levies on products from non-member states, customs duties from the common customs tariff and a percentage of the VAT receipts. Each member state contributes to the EU resources based on their trade with third countries and their own economic activity and thus contributes to the funding of the common expenditure. This may also be social security spending. For example if the EU finds a reason to help setting up a guaranteed minimum income in Greece as reparation for its stringent budgetary regime imposed on this country, this could be done with resources from the EU structural funds. Also local or civil society initiatives can be supported in this way. In fact, the recent initiative of the European Commission for a €3.8 billion Fund for European Aid to the Most Deprived already operates in this manner. The intention is that money for material aid will be distributed

²¹ Giandomenico Majone is a leading academic authority in the field of European regulatory governance. A prize in his honour is awarded by the ECPR Standing Group on Regulatory Governance for outstanding research by scholars in the field of regulatory governance from all relevant disciplinary academic backgrounds.

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through a network of non-governmental or local public organisations.²² If we look more closely at the Regulation establishing the Fund, it becomes apparent that the distribution of aid still requires the intermediation of the member states. In our model this is a possibility but no longer a necessity. Direct EU funding is also possible. EU funding of domestic social security initiatives is an expression of intra Union solidarity.

V. THE SUPRANATIONAL MODEL

Our fourth model gives way to supranational European social security schemes where the EU institutions own, finance and even administer the schemes. Dreams about a harmonised social security system are as old as the EU itself. They were discussed at the beginning of the 1960s by the European Commission, leading to a total boycott of the Social Council between February 1964 and December 1966. These were real tensions about the future of Europe, which easily rival the family squabbles that we have today.

Then in 1975 a report on economic and monetary union, published under the auspices of the then chairman of the EU Commission Marjolin, proposed the introduction of a common unemployment insurance system.²³ Such a benefit would be financed from a community fund, supported by employer and employee contributions paid directly into the fund. This proposal provided for a redistribution of the cost of unemployment among the member states with high benefit levels. The common unemployment benefit was meant to supplement the national benefits up to a specific level, as a result of which the poorer member states would be able to claim a larger share from the fund.

Ideas about a common unemployment insurance system have never left the European Commission. The Commission continued to initiate academic work in this field and on 13 June 2014 the then EU Commissioner for employment, social affairs and inclusion, László Andor, gave a speech in which he advocated a concrete idea for a basic European unemployment insurance. According to the Commissioner such a scheme would be beneficial to the fiscal stability of the eurozone by allowing for a system of monetary transfers between countries with high unemployment and countries with low unemployment. A basic unemployment scheme would replace the corresponding part of national schemes. The levels of the contribution and of the benefit should represent a relatively low common denominator between the rules of the various national schemes. For example, the basic European unemployment benefit would be paid only for the first months of unemployment and the amount would represent 40 per cent of the previous reference wage. Each Member State would be free to levy an additional contribution and pay out a higher or longer unemployment benefit on top of this European

²² Regulation 223/2014 [2014] OJ L72. See *European Commission memo/14/170* of 10 March 2014.

²³ The economic and monetary union 1980, Brussels, 1975.

unemployment insurance. Thus, the European scheme would be designed to guarantee 'a fairly basic standard of support during short-term unemployment'.²⁴

While the latest versions of a common unemployment system clearly have a financial and economic rationale, ideas for a Europe-wide social security scheme are rooted rather in social objectives, in particular poverty alleviation. In 1981 the Commission issued a communication which addressed the problem of poverty in Europe and the need for common minimum income standards. It was suggested by the Commission that a minimum income should be introduced in the member states which should take into account the minimum requirements of the individual or the family, be universally available to all non-active persons and be granted as a right.²⁵ This initiative eventually led to Council Recommendation 92/441/EEC of 25 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems.²⁶ Obviously the recommendation was not binding and two decades later in 2010, the European Anti-Poverty Network launched a working document containing an elaborate and detailed proposal for a minimum income framework directive, prepared by former Member of the European Parliament, Anne van Lancker.²⁷ The same year a proposal for a resolution for such a directive was tabled in the European Parliament, but failed to get a majority.

In terms of effectiveness of realising EU social security goals, a Europe-wide minimum scheme is an appealing one. Such a scheme would still have to operate with differentiated benefit levels according to the standard of living of the countries, but nonetheless the effect of such a scheme on reducing poverty levels must be impressive, taking into account that some countries, particularly among the new member states, apply benefit levels which are far below 60 per cent of the average national wage level, while some other countries in the southern region do not yet have a national universal safety net at all. Another advantage of a European minimum income scheme is that it still allows for flexibility and even autonomy for the member states to organise the extra minimal level. Social security can thus be construed as a two-pillar system, whereby the first pillar is a mandatory European one and the second pillar of extra minimal protection remains a competence of the member states. Also the introduction of a European minimum income scheme is much simpler from an administrative point of view compared with the immense complexities pertaining to the regulatory model discussed in the previous section.

The reason why a European minimum income scheme has not been feasible is related to the lack of powers in the TFEU and the political resistance against conferring competences in this field on EU institutions. Perhaps the dream will only become a reality after a major event, in the same way that the crisis of the 1930s gave way to Roosevelt's nationwide mandatory minimum pension system for old age, survivors and

²⁴ Lecture by László Andor, 'Social dimension of the Economic and Monetary Union: what lessons can we draw from the European elections?', Berlin, Hertie School of governance, 13 June 2014, http://europa.eu/rapid/press-release_SPEECH-14-455_en.htm.

²⁵ 23 Com (81)10 def.

²⁶ [1992] OJ L245/46.

²⁷ A van Lancker, *Working Document on a Framework Directive on Minimum Income* (EAPN 2010).

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disability, surviving up to this very day in the form of the Social Security Act of 1935. The Euro crisis of recent years, which has left so many people in Southern Europe unemployed and without any social protection, has had the potential to create such an event and the threat is not over yet. What will happen if the millions of dissatisfied and poor youngsters without opportunity from the poorest regions start to march on the capital cities and Brussels?

VI. THE AUTHORS' POSITION

Now that our reconnaissance of 'the four quarters of the land' has come to an end, let us now take a last look at the contributions of the authors of this volume to find in what quarter they situate their hopes and aspirations for the future of social security law. Not all contributions can be qualified in this manner, but when they can, it appears that most of them stay closely within the realm of the here-and-now of the co-ordination model. This may be logical for a handbook on European social security law: lawyers tend to take the present state of the law (and the divisions of competences on which it is based) as a starting point for their analyses. However, this is not to say that all the contributors rejoice in the present state of the law. What comes to the fore most of all is the complaint about the 'incongruent' state of European law and integration: a lack of inner cohesion.

Thus, for example, Copeland and ter Haar (Chapter 9) observe that there is a conflict of interests between social and economic policy objectives with the latter threatening to overshadow the former, just when the EU has more competences in the economic field. In his chapter about destitution and migration, Verschueren (Chapter 16) complains that the EU has difficulties in 'reconciling the right to free movement of persons and to equal treatment as a fundamental right with a constitutional status on the one hand with the policy objectives of fighting poverty and social exclusion explicitly laid down in the Treaty provisions and policy documents on the other'. Pennings (in Chapter 13) is concerned about a co-ordination of social security for migrant workers without any national harmonisation. Van der Mei, who discusses the co-ordination of student financial aid systems in the EU (Chapter 18) points at the uneasy relationship between the general export duty of maintenance grants for students ensuing from the notion of European citizenship and the rights to such grants based on the freedom of movement of workers. For Golynger (Chapter 19) the point of concern with regard to the current regulation of patient mobility is 'that it is trapped in the dilemma of achieving patient mobility without encouraging treatment outside the Member State of affiliation which stems from the clash between the interests of individual patients and national healthcare systems in the cause of the redistribution of the financial burden and consequent renegotiation of the national healthcare contract'. Katrougalos (Chapter 4) points at the difference in legal effect that is granted to classical human rights and fundamental social rights while Mikkola (Chapter 7) frequently points a finger at the tensions that arise from the fact that minimum standard setting has developed in the context of the Council of Europe and the ILO but not in the EU.

What do authors do with these misgivings, in what direction do they want European social security law to change? This is quite revealing. In the first place: none of the

authors has suggested solutions that would fit in the supranational model. Apparently, the prospect of a central EU social security scheme is too daunting, too hot to handle. Or perhaps it is considered to be unrealistic for political reasons. It may also be the case that it is not so much the lack of Euro-enthusiasm but rather a lack of support of a system of centralised, consolidated social security which is perhaps deemed to be too inflexible, bureaucratic or not in tune with local needs.

In the second place: none of the authors has suggested any solutions that would fit in the organic model. This is to be expected. Only anarcho-libertarians would enjoy the prospect of simultaneously allowing Europe *and* social security to fall apart, but then again, let us hope we will not have to cope with such a scenario.

In the third place, in my observation, only one author has made a proposal that would strengthen the co-ordination model of governance. This is Anne-Pieter van de Mei in Chapter 18. He suggests that in order to take into account the legitimate concerns of the member states, we have to release the member states from the obligations ensuing from Article 7(2) Regulation 1612/68 (now Regulation 492/2011), which protects the student children of migrant workers. In his view, instead, the EU must opt for a coherent co-ordination system for study grants, preferably within Regulation 883/2004, which is based upon a single-state rule, which makes clear which member state must assume responsibility for paying maintenance grants. This is clearly a proposal which would combine national autonomy with the classical objective of co-ordinating social security for the purposes of facilitating the freedom of movement of persons, now as EU student citizens. Van de Mei should be congratulated for the purity of this proposal. Instead of simply defending and hanging on to the achievements of the case law of the ECJ, he looks for more coherence within the present division of competences between the member states and the EU institutions.

Finally, in the fourth place, most of the authors have made suggestions which, in my observation, fit best in the regulatory model of governance. The clearest examples of this are Golyner (Chapter 19) and Borsjé and van Meerten (Chapter 15), who are all searching for new forms of governance combining EU objectives with national complexities. For example, Golyner's plea for the development of cross-border co-operation and partnerships between healthcare authorities creates a paradigm shift by facilitating patient mobility within the EU without creating a conflict between patients and the national solidaristic community. Similarly, the European Pension Union advocated by Borsjé and van Meerten is based upon the heterogeneity of national pensions systems, which should merely be provided with a stronger European governance framework. Also the proposals advocated by Pieters and Schoukens (Chapter 21) have a strong regulatory flavour. They do not aim to make the systems more uniform, but rather to create a principle-based framework, which takes account of the relationship between social security and other public areas, such as economic development.

Thus, on the whole, more European integration, allowing more national flexibility, seems to be the dominant trend. This is in line with the suggestion I made in the introduction to the Chapter, ie, that if one considers contemporary literature in the area of political science and public administration, with its emphasis on the diminishing role of the national state and its rejection of EU hard law centralism, the regulatory model

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might emerge as the favourite for many commentators, apparently also for legal commentators.

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